IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

P. JOSEPH NICOLA,
Appellant

CIVIL ACTION

v.

DAVID PISCITELLI,
Appellee

NO. **01-2448**

ORDER AND MEMORANDUM

AND NOW, this 5th day of April, **2002**, upon consideration of the Motion of David Piscitelli to Reconsider the Order Entered December 17, **2001** Vacating the Bankruptcy Court's Award of Sanctions (Docket No. 13), and the appellant's opposition thereto, IT IS HEREBY ORDERED that the motion is DENIED for the reasons set forth below. IT IS FURTHER ORDERED that the Motion by Steven Mirow for Leave to Intervene and Respond to Motion to Reconsider Order Vacating the Bankruptcy Court Award of Sanctions (Docket No. 14), is DENIED as moot.

P. Joseph Nicola appealed three orders of the Bankruptcy Court, which involved awarding and liquidating sanctions against him. This Court reversed the orders entered by the Bankruptcy Court because the motion requesting the sanctions was filed by the appellee after the entry of final judgment in the Bankruptcy Court, in contravention of a supervisory rule in

this Circuit. Under that supervisory rule, motions for sanctions are to be filed before the entry of final judgment. Marv Ann Pensiero, Inc. v. Lingle, 847 F.2d 90, 100 (3d Cir. 1988). It is an abuse of discretion for a court to award sanctions in violation of the supervisory rule. See Simmerman v. Corino, 27 F.3d 58, 63 (3d Cir. 1994).

In that appeal, Mr. Piscitelli had argued that the Bankruptcy Court's judgment was not final, because of a motion that Nicola had filed in that court, requesting an extension of time in which to file a motion for reconsideration of the dismissal of the case. This Court found that the motion for an extension was prohibited, because the time limit for filing reconsideration motions was jurisdictional, and could not be extended.

Appellee Piscitelli now seeks reconsideration of the Court's order reversing the Bankruptcy Court's sanctions award and liquidation. A district court will grant a party's motion for reconsideration only in three situations: (1) when new evidence becomes available; (2) when there has been an intervening change in controlling law; or (3) where there is a need to correct a clear error of law or to prevent manifest injustice. See General Instrument Corp. v. Nu-Tek Elec. & Mfg., 3 F. Supp.2d 602, 606 (E.D. Pa. 1998), aff'd, 197 F.3d 83 (3d

Cir. 1999). Here, the appellee argues only that the third situation applies.

The Court finds no clear error of law. Its decision was based on Third Circuit precedent. Pensiero established, without qualification, that the Third Circuit requires all motions requesting Rule 11 sanctions to be filed in the district court before the entry of final judgment. Id., 847 F.2d at 100. In subsequent opinions, the Third Circuit has upheld and expanded the rule to include sua sponte grants of Rule 11 sanctions, and sanctions under the court's inherent power. Prosser v. Prosser, 186 F.3d 403, 405 (3d Cir. 1999); Simmerman, 27 F.3d at 63.

The appellee relies on Chambers v. NASCO, Inc., 501 U.S. 32 (1991), and Cooter & Gell v. Hartmax Corp., 496 U.S. 384, 395-396 (1990), for the proposition that his motion was timely filed, and that the Bankruptcy Court properly ruled on it after entry of final judgment. But these precedents do not counsel a different result in this case. Chambers involved sanctions for abuses occurring or discovered after the entry of a final order, and therefore is inapposite. Chambers, 501 U.S. at 41-42. The abuses at issue here all occurred prior to the entry of a final judgment.

In Cooter, even though the district court did not rule on the sanctions until over three and a half years after the

complaint in the case was dismissed, the relevant sanctions motion had been filed before the entry of final judgment. Here, Mr. Piscitelli did not file his motion until after the entry of final judgment. Additionally, the Supreme Court in Cooter specifically stated that lower courts could adopt their own rules establishing timeliness standards for filing and deciding sanctions motions. See Cooter, 496 U.S. at 398. The Third Circuit has continued to apply its supervisory rule in opinions post-dating Chambers and Cooter. See Prosser, 186 F.3d at 406 n.3 (upholding Pensiero's supervisory rule, noting Chambers and Cooter).

Mr. Piscitelli's argument implies that he could not have filed his sanctions motion until after the Bankruptcy Court made a finding of bad faith. This is not accurate. Although the Bankruptcy Court could not have awarded the sanctions without having found bad faith, Mr. Piscitelli's motion for sanctions based on allegations of bad faith could have been filed before the court made its finding. In Mr. Piscitelli's motion requesting dismissal of the bankruptcy action, filed almost two months before the Bankruptcy Court entered final judgment, he made numerous references to Mr. Nicola's conduct as being in bad faith.

Mr. Piscitelli also argues that it was manifestly unjust for this Court to hold that Mr. Nicola's motion for an extension of time to file a reconsideration motion did not affect the finality of the Bankruptcy Court's judgment. But this was not a discretionary decision of the Court; as explained in the opinion of December 17, 2001, it was required by the rules. The Court emphasizes that its decision to reverse the Bankruptcy Court's orders had nothing to do with any evaluation of Mr. Nicola's alleged conduct giving rise to the allegation of bad faith.

BY THE COURT:

Mary A. McLaughlin, J.

4/8/02 to:
George, Esq
J. Vignone, Esq
D. Piscitelli, Esq
. Murow, Esq
F. Diorio, Esq

ed to:
Frederic Baker
Frederick Reigle
Hon. J. Jurdowski
Hon. B. Fox
Hon. Steven Rasdavich

IN THE UNITED STATES DISTRICT COURT
FOR **THE EASTERN DISTRICT OF PENNSYLVANIA**

P. JOSEPH NICOLA,		
Appellant		**CIVIL ACTION**
	:	
	:	
v.	:	
	:	
	:	
DAVID PISCITELLI,	:	
Appellee		**NO. 01-2448**

ORDER

AND **NOW, this** 14th **day of December, 2001, upon consideration P. Joseph Nicola's appeals** of the **Bankruptcy Court's Orders of January 26, 2001,** March 22, 2001, and **April 18, 2001, it is HEREBY** ORDERED **that the orders are reversed, and the** award of **sanctions is vacated, for** the **reasons set** forth **in a Memorandum dated** today.

BY THE COURT:

Mary A. McLaughlin

MARY A. MCLAUGHLIN, J.

governing when a bankruptcy judgment can be appealed state that a *timely* reconsideration motion under bankruptcy rule 9023 will toll the running of time during which an appeal can be filed, a court's consideration of an *untimely* 9023 motion does not. See Whitemere Dev. Corp. v. Township of Cherry Hill, 786 F.2d 185, 187 (3d Cir. 1986).

Therefore, the judgment in this case was final 10 days after it was entered on July 19, 2000. The Bankruptcy Court's decision to award and liquidate sanctions on the basis of a motion filed after the entry of that judgment, in contravention of the rule in Pensiero, was an abuse of discretion. See Prosser, 186 F.3d at 406 (Pensiero rule applies to sanctions under inherent power); Simmerman, 27 F.3d at 64 (awarding sanctions in violation of Pensiero's supervisory rule constitutes an abuse of discretion).

An appropriate order follows.

motions under rule 7052 (to amend or make additional findings of fact), rule 9023 (to amend or alter the judgment or for a new trial), and rule 9024 (for relief from the judgment or order). The motion Nicola filed on July 31, 2000 was not among those specified in the rule; it only requested an extension of time within which to file a 9023 motion.

In fact, the motion that Nicola filed was expressly disallowed by the rules. Bankruptcy rule 9006(b)(2) states that the court may not enlarge the time for filing a motion under rule **9023.** The time for filing a **9023** motion is limited to 10 days after the entry of the judgment. Fed. **R.** Bankr. P. **9023** (adopting Fed. **R.** Civ. P. 59); Fed. R. Civ. P. 59(e) (limiting time for filing motions to alter or amend judgment). The Third Circuit has held that the 10-day rule for filing reconsideration motions is jurisdictional, and cannot be extended in the discretion of the court. Adams v. Trustees of New Jersey Brewery Emp. Pens. Trust Fund, 29 F.3d 863, 870 (3d Cir. 1994). The only exception to the 10-day rule is based on a "unique circumstances" doctrine which the Court of Appeals has construed very narrowly and which is neither argued nor implicated here. See Kraus v. Consolidated Rail Corp., 899 F.2d 1360, **1365** (3d Cir. **1990).**

Accordingly, even if Nicola had proceeded to file a 9023 motion after July 31, **2000, that motion** could not have affected the finality of the judgment. Although the rules

bankruptcy rule 9011, the policies on which the ~~Pensiero~~ decision rests - preventing piecemeal appeals and promoting efficiency - are equally applicable in the bankruptcy context, See ~~Landon v. Hunt~~, 977 F.2d 829, 833 n.3 (3d Cir. 1992) (holding civil procedure rule 11 precedent applies to bankruptcy rule 9011); see also In re Brown, Civ. A. 97-5302, 1998 WL 848102, at *3 (E.D. Pa. Dec. 4. 1998) (holding Pensiero applies to bankruptcy rule 9011); In re HSR Assocs., 162 B.R. 680, 682 (Bankr. D.N.J. 1994) (same); 10 Lawrence P. King, Collier on Bankruptcy ¶ 9011.02[3] (15th ed. rev. 1997) (noting precedents developed under civil procedure rule 11 are of significant use in applying bankruptcy rule 9011).

At the time Piscitelli filed his motion for sanctions, the July 19, 2000 order dismissing the case had already been entered and was final. The bankruptcy court held in its order denying reconsideration of the sanctions order, and Piscitelli argues here, that Nicola's motion for an extension of time to file a motion for reconsideration of the July 19 order under bankruptcy rule 9023 rendered the judgment in the case non-final. This Court does not agree.

That motion for an extension should not have affected the finality of the July 19, 2000 decision. Rule 8002 of the Federal Rules of Bankruptcy Procedure specifies the types of motions that will toll the time for appeal. These include timely

judgment by operation of law had already been entered; and (2) the sanction was improperly awarded because there had not been particularized notice of the sanctionable conduct, or a finding of causation. Because this Court finds appellant's argument on the first issue dispositive, it will not address the second.

A district court's review of a bankruptcy court's legal determinations is plenary. See Brown v. Pennsylvania State Employees Credit Union, 851 F.2d 81, 84 (3d Cir. 1988). In reviewing an imposition of sanctions, the district court reviews for abuse of discretion. See Fellheimer, Eichen & Braverman v. Charter Technologies, Inc., 57 F.3d 1215, 1223 (3d Cir. 1995).

In this Circuit, motions for sanctions must be filed before the entry of final judgment. The Court of Appeals established this supervisory rule in Marv Ann Pensiero, Inc. v. Lingle, 847 F.2d 90, 100 (3d Cir. 1988), which dealt with a motion filed under Fed. R. Civ. P. 11. The supervisory rule has since been extended to include courts' sua sponte grants of Rule 11 sanctions, and sanctions awarded under a court's inherent power. Prosser v. Prosser, 186 F.3d 403, 406 (3d Cir. 1999) (inherent power); Simmerman v. Corinao, 27 F.3d 58, 63 (3d Cir. 1994) (*sua sponte* Rule 11 sanctions).

Although the Pensiero rule has not explicitly been held by the Third Circuit to apply to sanctions awarded under

ruling can be fairly inferred, and the opposing party is not prejudiced. See Torres v. Oakland Scavenger Co., 487 U.S. 312, 316 (1988); Forman v. Davis, 371 U.S. 178, 181-182 (1962); 20 Moore's Federal Practice, § 303.21[3][c][ii]. This Circuit has held that it will review earlier non-final orders not specified in a notice of appeal if: (1) there is a connection between the specified and unspecified order; (2) the intention to appeal the unspecified orders is apparent; and (3) the opposing party is not prejudiced and has a full opportunity to brief the issues. See General Motors Corp. v. New A.C. Chevrolet, Inc., 263 F.3d 296, 311-12 n.3 (3d Cir. 2001) (citations omitted).

Here, the notice of appeal complied with Fed. R. of Bankr. P. 8001(a) by naming all parties to the relevant orders. In addition, the notice complied with the appeal standard articulated in General Motors: there is a connection between the April 18 order and the earlier orders; the intention to appeal the unspecified orders is apparent; and both parties here briefed issues relating to both the granting and the liquidation of the sanctions. See id.; see also In re Cascade Roads, Inc., 34 F.3d 756, 761 (9th Cir. 1994) (unnamed bankruptcy order still properly on appeal where court could infer intent to appeal and both parties had fully briefed all relevant issues).

Turning to the merits of the appeal, Nicola asserts that (1) the sanctions motion was untimely filed, because a final

of bankruptcy courts. That subsection specifies that district courts may review "final judgments, orders and decrees...." 28 U.S.C. § 158(a)(1).

The orders concerning sanctions were not final until the sanctions had been liquidated. In In re Colon, 941 F.2d 242, 245 (3d Cir. 1991), the Third Circuit reviewed bankruptcy appeals ruled on by a district court. The Court of Appeals held that a portion of a bankruptcy court order allowing attorneys' fees but deferring quantification was not appealable because it lacked finality without quantification. Id. at 245. Similarly, here, the January 26, 2001 award of sanctions was not final until the sanction was quantified. The liquidation order was not entered until April 18, 2001, and therefore, Nicola's appeal is timely.

The Court also holds that the appellant's failure to include the two earlier orders in the notice of appeal does not prevent review of those two orders. It is not clear that the Federal Rules of Bankruptcy Procedure require notices of appeal to designate the judgment, order, or parts thereof being appealed, in the same way that the Federal Rules of Appellate Procedure do. Compare Fed. R. Bankr, P. 8001(a) with Fed. R. App. P. 3(c). Even under the federal appellate rules, the requirement to designate the order or judgment appealed from has been liberally construed by courts; appeals are not dismissed for mere technicalities if the intent to appeal from a specific

On February 5, 2001, Nicola filed a Motion to Reconsider the January 26, 2001 Order. That motion was denied on March 22, 2001. On April 18, 2001, the Bankruptcy Court conducted a hearing to liquidate the monetary sanction imposed by the January 26, 2001 Order. On the same day, the Bankruptcy Court entered an order imposing a monetary sanction jointly and severally upon Nicola and his counsel in the amount of $22,142.87.

On April 24, 2001 Nicola filed his Notice of Appeal of the "Order...of April 18, 2001 entering sanctions in the amount of $22,142.87 jointly and severally against P. Joseph Nicola and Steven Mirrow [sic], Esq." Notice of Appeal.

As an initial matter, Piscitelli argues that the only issue properly before the Court is the amount of sanctions imposed by the Bankruptcy Court on April 18, 2001. Piscitelli argues that the Court does not have jurisdiction over the January 26 and March 22 orders because (1) they were not appealed within 10 days after they were entered; and (2) they were **not** listed in the notice of appeal.

The Court holds that the 10-day rule for appeal does not prevent the Court's consideration of the two earlier orders because they were not final for appeal purposes until the **Bankruptcy Court liquidated the sanctions. Title *28* U.S.C. §** 158(a) establishes a district court's jurisdiction over decisions

hundred thousand dollars.

Piscitelli filed a dismissal motion in the bankruptcy, alleging a lack of veracity and good faith on the part of the debtor. Following a hearing, the Bankruptcy Court entered an order on July 19, 2000, dismissing the debtor's case with prejudice.

On July 31, 2000, Nicola filed a motion requesting an extension of the time within which to seek reconsideration of the dismissal order. The motion was denied as moot on August 16, 2000, after debtor had failed to file the underlying reconsideration motion within the relaxed timetable he had sought.

Meanwhile, on August 4, 2000, Piscitelli had filed a motion for sanctions against Nicola and Nicola's attorney, Steven Mirow. A hearing on the motion occurred on October 2, 2000. On January 26, 2001, the Bankruptcy Court entered an order imposing sanctions under its inherent power on Nicola and Mirow jointly and severally for Piscitelli's reasonable attorneys' fees and expenses incurred in the bankruptcy case. The Bankruptcy Court additionally found that conduct in the case violated Rule 11, but entered no separate order, because the Rule 11 sanction was subsumed by the sanction under the court's inherent power. The Bankruptcy Court ordered a supplemental hearing for the purpose of liquidating the sanction.

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COPY

MEMORANDUM AND ORDER

McLaughlin, J. December 14, 2001

P. Joseph Nicola has appealed three Bankruptcy Court orders: one awarding sanctions against him; one denying reconsideration of the order awarding sanctions; and the other liquidating the sanctions. The orders were dated, respectively, January 26, 2001, March 22, 2001, and April 18, 2001. Because the sanctions motion was filed after judgment was entered, the motion was untimely. The Court will reverse the orders, and vacate the award of sanctions,

Debtor Nicola filed a petition under Chapter 13 of the United States Bankruptcy Code on July 8, 1999 in the Bankruptcy Court of the Eastern District of Pennsylvania. The bankruptcy was filed to avoid a litigation pending in the Superior Court of New Jersey, in which appellee David Piscitelli alleged that Nicola conspired to and defrauded Piscitelli out of several